84-800

Office Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

NO. ___

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

THE AMERICAN FUNDAMENTALIST CHURCH
Petitioner,
v.
COUNTY OF HENNEPIN
Respondent,

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether Hennepin County, by denying petitioner property tax exemption for its parsonage while granting property tax exemption for parsonages to other persons of the same class, has applied in an unconstitutionally discriminatory manner Minn. Stat. 272.02 Subd. 1(5)(Exempt Property) and Article X of the Minnesota Constitution (Taxation), and has thereby deprived petitioner of equal protection under the law.

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JURISDICTIONAL GROUNDS

The decree of the Minnesota Supreme Court sought to be reviewed is dated June 11, 1984.

Jurisdiction to review the decree in question is invoked under 28 U.S.C. 1257 (3).

OPINIONS BELOW

The summary affirmance of the Minnesota Supreme Court, Case No. CX-83-750, _____Minn._____ (1984) is included in the Appendix at A-1.

The Minnesota Tax Court's Findings of Fact, Conclusions of Law, and Order for Judgment and the accompanying Memorandum, Tax Court File No. TC-1535 (1983) are included in the Appendix at A-2 through A-11.

CONSTITUTIONAL PROVISIONS AND STATUTES

Minnesota Constitution Article X, Taxation, Section 1. (See Appendix at A-11).

Minn. Stat. 272.02, Subd. 1(5)(See Appendix at A-12 through A-14)

United States Constitution

First Amendment

Fourteenth Amendment

STATEMENT OF THE CASE

The American Fundamentalist Church (the Church) was incorporated under Minn. Stat. Ch. 315 in 1980. It procured in the same year property which it used as a parsonage for its minister, church offices and a meeting house. It applied to Hennepin County for exemption from real estate taxes on said property as of January 2, 1981, on the basis that the property was church property owned and used for church purposes and therefore exempt from property tax pursuant to Article X, Section 1, of the Minnesota Constitution and Minn. Stat. 172.02, Subd. 1(5).

The Hennepin Tax Assessor denied the request for exemption. The Tax Court affirmed the denial of the exemption in its Findings of Fact,

Conclusions of Law, and Order for Judgment dated March 22, 1983.

Review of the Tax Court decision was sought be Petition for a Writ of Certiorari; the Minnesota Supreme Court summarily affirmed the decision without opinion by its Order dated and filed on June 11, 1984.

The Church is incorporated under Minn. Stat. Chapter 315. There are eleven (11) members of the church including the Pastor and his wife. There is no indication that the other members are related to the Pastor. The Pastor and his wife do not control the corporation.

There was considerable evidence presented at trial concerning the administration and operation of the Church. The affairs of the Church are controlled by a Board of Trustees which

has the power to remove the Pastor. The property of the Church must be disposed of upon dissolution by distribution to an exempt organization.

The Church has a doctrine and belief which are binding upon its members, who may not practice other religions. It has sacraments, rituals, literature of its own, and a liturgy. It has an ordained minister.

The Church requires a belief in a supreme being, and is an institution which advances religion, as that term is commonly understood, as a way of life for all men.

The Petitioner meets the criteria generally set forth by the Internal Revenue Service and the Minnesota Supreme Court as indicative of an exempt religious organization.

The Petitioner testified at trial, and the County Assessor admitted, that the property was used for church purposes. Mr. Robert Martz, the Assessor, was asked

Q. Do you know what purpose this property was being used for?

A. A church.

Q. Pardon me?

A. A church.

Q. So far as you know it was being used for church purposes?

A. As far as I know.

The Petitioner plead in its Appeal to the Tax Court that the actions of the Hennepin County Assessor violated the constitutional rights of the Petitioner under the Minnesota Constitution and the United States Constitution.

During trial in the Tax Court, the Petitioner sought to introduce evidence that Hennepin County, pursuant to Article X, Section 1, and Minn. Stat. 272.02, Subd. 1(5), granted property tax exemption to all churches for church

property used as parsonages, for ministers, and even as residences for the director, custodian or administrator of tax exempt organizations. The Tax Court refused to admit such evidence. Petitioner made an offer of proof showing that persons of the same class, including mirror images of the petitioner, were routinely granted property tax exemption.
T. 131-138.

ARGUMENT

The State Court has decided a Federal question in a way in conflict with applicable decisions of the United States Supreme Court, in that the State Court decision allows a descriminatory application of the property tax standards, thereby denying the Petitioner equal protection.

The essence of equal protection is even-handed treatment of all who are similarly situated. "[T]he equal protection of the laws is a pledge of the protection of equal laws." Yick Wo v. Hopkins, 118 U.S. 356, 369. 65 S.Ct. 1064, 1070 (1886). and "[t]hough the law itself be fair on its face and impartial in appearance, yet, it if is applied and administered by public authority with an evil eye and an unequal

hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, . . . the denial of equal justice is still within the prohibition of the Constitution." Id. at 373-74, 65 S. Ct. at 1073. Where, as here, other persons of the same class are granted property tax exemption, the refusal of Hennepin County to grant Petitioner property tax exemption constitutes a deprivation of equal protection under the law.

The proper remedy in such circumstances is not merely to hope that some day the same standards will be applied to other churches. In Yick Wo, the Court reviewed a law that banned the construction of wooden laundries by persons failing to receive an exemption in the form of a municipal license.

It held violative of equal protection the city's denial of such exemptions to Chinese applicants whose non-Chinese counterparts were routinely granted exempt status. The Chinese applicants who were discriminated against in Yick Wo were not relegated by the Supreme Court to the licensing body's future good intentions nor left to persuade that body to deny licenses to similarly situated non-Chinese applicants.

The principle of Yick Wo is by no means limited to cases of alleged racial, ethnic, or national discrimination. In Iowa-Des Moines National Bank v. Bennett, 284 U.S. 239, 52 S. Ct. 133 (1931), the Supreme Court reviewed a state tax attacked for being imposed in a manner impermissably discriminating against the petitioner banks. The reply of the

state officials, which was accepted by the state's highest court, was "that the petitioners had no other remedy than to await action by the taxing authorities to collect [higher] taxes . . . from their competitors or to initiate proceedings themselves to compel such collection". Id. at 243-44, 52 S. Ct. at 135. A unanimous Supreme Court, in an opinion by Justice Brandeis, condemned that ruling as "rest[ing[upon a misconception of the scope and effect of the federal rights involved." Id. at 244, 65 S. Ct. at 244.

> The fact that the State may still have power to equalize the treatment of the petitioners and [others] by compelling the latter to pay [higher] taxes is not material . . . . [For the] right invoked is that to equal treatment; and such treatment will be attained if either [the] taxes [of others] are increased or their own reduced. But it is well settled that a taxpayer who has been subjected to discriminatory

> taxation through the favoring of others in violation of federal law, cannot be required himself to assume the burden of seeking an increase of the taxes which the others should have paid . . . . Nor may he be remitted to the necessity of awaiting such action by the state officials upon their own initiative.

Id. at 24, 52 S. Ct. at 347; accord, Califano v. Wescott, 443 U.S. 76, 89-93, 99 S. Ct. 2655, 2663-65 (1979); Welsh v. United States, 398 U.S. at 362-63 n.15, 90 S. Ct. at 1808 n.15 (Harlan, J., concurring); see also Ginsburg, Some Thoughts on Judicial Authority to Repair Unconstitutional Legislation, 28 Clev. St. L.J. 301, 306-10 (1979).

The reasons for such a principle--both as a matter of equal protection and as a matter of anti-establishment--are persuasive. Apart from the obvious difficulty of judicially ordering an increase in the taxation of others,

"[n]othing opens the door to arbitrary actions so effectively as to allow . . . officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected." Railway Express Agency, Inc., v. New York, 336 U.S. 106, 112-13, 69 S. Ct. 463, 467 (1949) (Jackson, J., concurring).

That Hennepin County, and indeed, the entire State of Minnesota has routinely exempted parsonages from property taxation is noted by the Tax Court in its memorandum (A- 5), wherein it states

> Since 1906 the Minnesota Supreme Court has interpreted the present Constitution to exempt church parsonages . . . .

Certainly such treatment is clear from a reading of Minnesota's decisions on the

issue. See, State v. Church of Incarnation, 196 N.W. 802 (Minn. 1924); State v. Union Congregational Church, 216 N.W. 326 (Minn. 1927); State v. Second Church of Christ, 240 N.W. 532 (Minn. 1932). The Minnesota Tax Court has even extended the exemption to a custodian's residence in Elim Baptist Church v. County of Hennepin, Tax Court Nos. 1004 and 1038, dated July 21, 1981, and to the administrator of a tax-exempt nursing home in First Christian Church of Minneapolis (Disciples of Christ) v. County of Hennepin, Tax Court Nos. 1003 and 1039, dated July 21, 1981.

In most plain language the Minnesota Supreme Court stated the law with respect to treatment of a parsonage in State v. Union Congregational Church, 173 Minn. 40, 42, 216 N.W. 326 (Minn. 1927), as follows:

> Then the question of the exemption of parsonages came again before the Court, under the amended constitutional provision, in the case of State v. Church of Incarnation, 158 Minn. 48, 196 N.W. 802, and it was held that a parsonage, owned by the church society as a residence for its priest or minister, free of charge or rent, was exempt from taxes.

The Tax Court seems to have based its decision on the supposition that because the Church had only eleven (11) members the pastor may not have devoted his full time to church activities, and therefore (and somewhat illogically) the residence of the pastor may not have been used principally for church activities. While such a position, in light of state and federal precedent, is clearly a denial of equal protection, it also thinly veils a denominational preference for larger churches with the resources to employ full time ministers. It is for this reason, perhaps, that the Tax Court was

"not completely comfortable" with its denial of exemption. See, Larson v. Valente, 456 U.S. 228, 246, 102 S. Ct. 1673, 1684 (1982).

Further, the requirement that the pastor be a full time pastor (and there is no evidence that this one was not) would constitute an unduly restrictive criterion for determination of what constitutes a church. The validity of such standards are highly questionable. See, Christian Jew Foundation v. State, 653 S. W. 2d 607, 615-17 (Tex. App.1983) (rejecting I.R.S. criteria and defining church as "any religious organization which, as the whole of its activities, advocates and teaches its particular spiritual beliefs before others with a purpose of gaining adherents to those beliefs and instructing them in the doctrine which those beliefs comprise;

cf. Unification Church v. I.R.S., 547 F. Supp. 623, 628 (D.D.C. 1982) (Standards held invalid for lack of delegated authority).

These principles were not raised separately, nor did they constitute the ratio decidendi of the Tax Court's decision. Nonetheless, they are inherent in the concept of equal protection, in that the "full time minister" criterion has apparently never been utilized with respect to other persons of the same class and seems to have never been applied but for the instant case.

On the other hand, conformity with generally accepted criteria has in the past justified property tax exemption for other persons of the same class as Petitioner, but is not sufficient in the instant case.

In conclusion, the Tax Court has defined a parsonage as "a residence for the pastor who devotes his full-time to church activities." Without guidance, the Court simply assumes that if a pastor is not supported by his congregation, his residence is not being "appropriately" used for church purposes. This assumption is unsupported by either analysis or authority. The application of such a definition to this Petitioner only, and the refusal to grant exemption in the face of proof of its entitlement as an appropriate religious organization, constitutes a denial of equal protection.

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September 7, 1984

STATE OF MINNESOTA

IN SUPREME COURT

CX-83-750

The American Fundamentalist Church, Relator,	Joseph L. Mannikko Thomas J. Sandstrom Oberg & Mannikko 250 N. Central Ave. Wayzata, MN 55391
vs.	
County of Hennepin, Respondent.	Thomas L. Johnson Charles F. Sweetland Hennepin Co. Attys. A-20 Government Center Minneapolis, MN 55487

Considered and decided by the court en banc without oral argument.

O R D E R

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the decision of the Tax Court, filed March 22, 1983, be, and the same is, affirmed without opinion. See Minnesota Rules

of Civil Appellate Procedure 136.01, subd. 1(b).

DATED: June 11, 1984 BY THE COURT

Douglas K. Amdahl
Chief Justice

STATE OF MINNESOTA — TAX COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

The American Fundamentalist Church,

Petitioner,

vs.

County of Hennepin,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

File No. TC-1535

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, at the Governement Center, Minneqpolis, Minnesota, on January 31, 1983.

Joseph L. Mannikko of Oberg and Mannikko appeared on behalf of Petitioner.

Charles F. Sweetland, Assistant County Attorney, appeared on behalf of Respondent.

Briefs were subsequently submitted by both parties.

SYLLABUS

Real property will not be found to be exempt from real estate taxes unless it is clearly shown that it comes within a statutory or constitutional exemption. The principal factor in determining whether or not real property is exempt on the basis of the church exemption is the principal use of the property.

FINDINGS OF FACT

1. The property involved in this matter is described as the east 312 feet of the west 520.5 feet of the north 416 feet of the northwest quarter of the northwest quarter of the southeast quarter of Section 9, Township 116, Range 22, also known as 15817 Valley View Road, Eden Prairie, Hennepin County.

2. The question involved is whether or not the subject property is entitled to exemption from real estate taxes as of January 2, 1981, on the basis that it is church property as used in Minnesota Statutes and the Minnesota Constitution.

3. The subject property is in the name of the American Fundamentalist Church according to instruments recorded in the Office of the County Recorder of Hennepin County. Exhibits 2 and 3.

4. The American Fundamentalist Church is incorporated as a church under Minnesota Statutes Chapter 315. Exhibits 7 and 8. Said incorporation papers include the following provision:

> All property of the church is irrevocably dedicated to the spiritual, religious purposes of the church, and the exempt purposes above described. Upon

> the dissolution of the church, the Board of Trustees shall, after paying or making provisions for the payment of all of the liabilities of the church, distribute the assets of the corporation for an exempt purpose, to such organization or organizations as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code (or the corresponding provision of any future United States Internal Revenue Law) as the Board of Trustees shall determine. Any such assets not so disposed of shall be disposed of by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the church was organized.

5. Petitioner called a witness who stated that he was a member of the Board of Trustees of the church. He stated that Douglas Page is the pastor and head of the church and that he lives in the subject property. He stated that the lower level of the building is used for the offices of the church, board meetings, and church

services. He stated that there were presently 11 members of the church including Douglas Page, the pastor, and his wife, Carolyn Page. There was no indication that the other members were related to the pastor. He stated that the church believes in the New and Old Testaments of the Bible, that it has rituals involving baptism, confirmation and marriage, that it has a liturgy, that it distributes pamphlets, that it receives contributions from members, and that it observes all Christian holidays. He stated that he believes the pastor is paid $400 a month, but there was no indication of the total contributions received by the church.

6. A Certificate of Ordination of Douglas Page has been filed with the County of Hennepin on January 29, 1980, in Book 83, Page 118, indicating

that the filing is a permanent filing as long as he remains a Minister in good standing within the same denomination. Apparently this authorizes him to conduct marriages. The witness testified that he had been advised that Douglas Page had performed one marriage, but there was no other evidence of this. The witness stated that he did not believe Douglas Page had performed any baptisms.

7. The witness stated that services are held once a week but Petitioner's brief stated the following:

> The property was at one time used as a meeting place, but meetings were moved to another location to comply with local zoning laws (Exhibit 9, page 41).

Exhibit 9 is a transcript of testimony of Robert N. Martz, assessor for Eden Prairie, which was introduced and received.

8. The witness stated that the subject property was formerly used by the Basic Bible Church of America, Chapter 8035. The Basic Bible Church of America previously claimed exemption for the subject property and this claim was denied in Basic Bible Church of America, Chapter 8035 v. County of Hennepin, TC-0649, decided April 21, 1980.

9. We find that the principal use of the property was for non-exempt purposes, and the petition for exemption should be denied.

CONCLUSION OF LAW

1. The denial of the exemption for the subject property by the assessor is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

Dated: March 22, 1983

MEMORANDUM

The Testimony was not sufficient to show that the subject property which is in the name of the American Fundamentalist Church is entitled to the exemption provided by the Minnesota Constitution, Article X, Section 1 and Minnesota Statutes 272.02

Minnesota Constitution, Article X, Section 1 provides in part as follows:

> Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes but. . .all churches, church property, houses of worship, in this section. . . The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning.

Minnesota Statutes Section 272.02, subd. 1 states in part as

follows:

> . . .all property described in this section to the extent herein limited shall be exempt from taxation: . . .(5) all churches, church property and houses of worship;

Prior to 1906 the Minnesota Constitution provided exemption for "all churches, church property used for religious purposes, and houses of worship."

Prior to 1906 this had been interpreted to exempt only churches and not parsonages or any other church property on the basis that parsonages and other similar properties were not used for religious purposes. Since 1906 the Minnesota Supreme Court has interpreted the present Constitution to exempt church parsonages, State v. Church of Incarnation, 158 Minn. 48, 196 N. W. 802, and State v. Union Congregational Church, 173 Minn. 40, 216 N. W. 326; church buildings in

State v. Second Church of Christ, 185 Minn. 242, 240 N. W. 532; a residence for the Director of Foreign Missions, State v. Board of Foreign Missions of Augustana Synod, 221 Minn. 536, 22 N.W. 2d 642 (1946). This Court further extended the exemption to a custodian's residence in Elim Baptist Church v. County of Hennepin, Tax Court No. 1004 and 1038, dated July 21, 1981, and to the administrator of a tax exempt nursing home in the First Christian Church of Minneapolis (Disciples of Christ) v. County of Hennepin, Tax Court Nos. 1003 and 1039, dated July 21, 1981.

The Internal Revenue Service has developed a list of 14 characteristics that it utilizes in determining whether an organization qualifies as a church. These are listed in Publication 557, 1979 Edition, page 29, as

follows:

"A distinct legal existence.

A recognized creed and form of worship.

A definite and distinct ecclesiastical government.

A formal code of doctrine and discipline.

A distinct religious history.

A membership not associated with any other church or denomination.

A complete organization of ordained ministers ministering to their congregations.

Ordained ministers selected after completing prescribed courses of study.

A literature of its own.

Established places of worhsip.

Regular congregations.

Regular religious services.

Sunday schools for the religious instruction of the young.

Schools for the preparation of its ministers.

The Internal Revenue Service,

however,, does not give controlling weight to any single factor, since some well recognized religious organizations might not satisfy all of these characteristics."

The Minnesota Supreme Court in Ideal Life Church of Lake Elmo v. County of Washington, 304 N. W. 2d 308 (1981), in an appeal from the Minnesota Tax Court quoted with approval the following portion of the Minnesota Tax Court decision.

> In summary, the proper test for determination of a church" depends upon an analysis of all the facts and circumstances of each particular case. In the present action the following factors, each of which are amply supported by the evidence, lead to the clear conclusion that Petitioner is not a "church" for Minnesota tax exemption purposes:
>
> 1. In substance, the preconceived and primary, if not the sole, motive behind Petitioner's organization and operation was tax avoidance in favor of the private individuals who control the corporation to wit: LeRoy Rossow and his family.
>
> 2. Petitioner's doctrine and

beliefs, such as they are, are intentionally vague and non-binding upon its members.

3. Petitioner's members freely continue to practice other religions.

4. Petitioner has no formally trained or ordained ministry.

5. Petitioner has no sacraments, rituals, education courses or literature of its own.

6. Petitioner has no liturgy, other than simple meetings which resemble mere social gatherings or discussion groups rather than religious worship.

7. Petitioner is not an institution which advances religion (as that term is commonly understood) as a way of life for all men.

8. Petitioner does not require a belief in any supreme being or beings.

Whatever else it may be, the evidence is clear that Petitioner is simply not a "church" as that term is used in Minnesota Constitution, Article X, Section 1 and Minnesota Statutes Section 272.02, subd. 1(5).

We do not feel very comfortable with either the above citation from

Ideal Life Church of Lake Elmo, supra, or the Internal Revenue Service characteristics.

We agree with the concurring opinion of Justice Wahl in Ideal Life Church of Lake Elmo in which she states the following:

> I respectfully disagree with the majority opinion's characterization of "church", because it too narrowly defines "church" and "religion" for constitutional purposes.

She goes on to describe the difficulties in trying to define a church or a religion and basically concludes that it is a subjective judgment that must be made by the trier of fact.

One of the objects and requirements of taxation is equality. It is difficult to have equality in this type of case when the terms are not well-defined.

In State v. Board of Foreign Missions of Augustana Synod, supra, the Minnesota Supreme Court said that when the Constitution was amended to delete the requirement that church property be "used for religious purposes" the exemption was extended to parsonages and other types of property. We have to assume that this is the correct interpretation. However, the Constitution was later amended to add the following language:

> The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning.

This clearly gives the legislature the authority to define and limit the exemption for church property used as residences and perhaps the legislature should consider some action.

The Constitution now uses the words "churches" and "church property". Churches would appear to mean the building in which the congregation holds meetings or services, or reading rooms such as used by Christian Scientists. "Churches" would not include buildings in which people live.

The Constitution provides exemption for "churches" and the legislature can not change this. We find no difficulty in defining "churches" as being the buildings in which services are held and which are not used for living residence. If a building is used partly for services and partly for living residences a percentage exemption can be allowed as in Christian Businessmen's Committee v. State, 228 Minn. 549, 38 N. W. 2d 803 (1949).

The problem arises in defining what is exempt as "church property". At the present time both the Constitution and Statutes exempt "church property". The Constitution expressly allows the legislature to define and limit the exemptions for church property which is not defined as "churches, houses of worship".

There is now an inequality even among established churches. In many of the churches the pastor must provide his own residence, either by renting or purchasing it. In either event he must pay taxes on the property and, of course, since the church is paying him, the church is really paying the taxes. Such pastors and churches are being discriminated against in comparison to other churches which maintain parsonages for their pastors.

There may be a very questionable basis for providing any exemption for living residences of pastors or anyone else. Pastors, church personnel and anyone else living in residences provided by the churches are receiving basically the same benefits as any other property owners, such as police and fire protection, streets, utilities, educational and recreational facilities, etc. To this extent, other taxpayers willingly or unwillingly are subsidizing religions.

We find it difficult to say whether or not the American Fundamentalist Church is really a church. All churches had some beginning and few new churches would meet many of the characteristics of the Internal Revenue Service requirements.

It would not appear that the

pastor would have to devote much of his time to church activities with only 11 members. There was no evidence offered as to how much time he did devote to church activities except for the weekly services which are no more than any churchgoer devotes.

The testimony is not clear as to whether or not the property is used as a church for the conducting of services.

We are basing our decision in this case principally for church purposes. We are not completely comfortable with this finding. Possibly in most instances parsonages are used as the residence for the pastor who devotes his full-time to church activities, but we are aware of the fact that in many new congregations of existing established churches

the pastor must work full-time or part-time at least for a while because the new congregation is too small to support the pastor entirely. We would be much more comfortable if the legislature would direct its attention to this matter and arrive at more clear-cut definitions, especially since it is specifically authorized to do so under the Constitution. As an indication of a part of the extent of the problem, we are attaching hereto a copy of a letter dated January 4, 1978, from the Commissioner of Revenue to all county assessors which is marked Exhibit E.

C.A.J.

January 4, 1978

TO ALL COUNTY ASSESSORS:

Recently there has been a dramatic increase in the number of individuals seeking exemption from property and other taxes based on a claim that they have organized new churches and deeded their property to the churches. Many of the individuals make no secret of the fact that they have organized the churches and deeded their property to the churches for the sole purpose of avoiding paying taxes.

We wish to remind assessors that an exemption is not extended to a particular piece of property merely because it is owned by an organization which calls itself a "church". It is the nature of the used of the property and its reasonable relation to the accomplishment of the objectives of the church that form the basis for the exemption. It is obvious that if the sole purpose of the church is tax avoidance, then it may not fall within the constitutional protections afforded churches and church property or qualify for exemption.

If you have any individuals in your jurisdiction seeking exemption on their property because it has been deeded to a church organization, we would strongly encourage you to contact the Department of Revenue at (612) 296-5131. The information which you provide us with concerning these church organizations will enable us to

make more informed judgments about the appropriateness of granting any exemption to them.

Yours truly,

ARTHUR C. ROEHER
Commissioner of Revenue

ACR:MPW:vh

EXHIBIT E

ARTICLE X

T A X A T I O N

Sec.

1. Power of taxation; exemptions; legislative powers.
2. Forestation.
3. Occupation tax; ores.
4. Motor fuel taxation.
5. Aircraft taxation.
6. Taconite taxation.
7. Repealed, Nov. 5, 1974.

§1. Power of taxation; exemptions; legislative powers

Section 1. The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, but public burying grounds, public school

houses, public hospitals, academies, colleges, universities, all seminaries of learning, all churches, church property, houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation except as provided in this section. There may be exempted from taxation personal property not exceeding the value of $200 for each household, individual or head of a family, and household goods and farm machinery as the legislature determines. The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation. The legislature by law may define or limit the property exempt under this section other than

churches, houses of worship, and property solely used for educational purposes by academies, colleges, univerisities and seminaries of learning.

§ 272.02 Exempt property

Subdivision 1. Except as provided in other subdivisions of this section or in section 272.025 or section 273.13, subdivisions 17, 17b, 17c or 17d, all property described in this section to the extent herein limited shall be exempt from taxation:

(1) All public burying grounds;

(2) All public schoolhouses;

(3) All public hospitals;

(4) All academies, colleges, and universities, and all seminaries of learning;

(5) All churches, church property, and houses of worship;

(6) Institutions of purely public charity except property assessed pursuant to section 273.13, subdivisions 17, 17b, 17c or 17d;

(7) All public property exclusively used for any public purpose;

(8)(a) Class 2 property of every household of the value of $100, maintained in the principal place of residence of the owner there of. The county auditor shall deduct such exemption from the total valuation of such property as equalized by the revenue commissioner assessed to such household, and extend the levy of taxes upon the remainder only. The term "household" as used in this section is defined to be a domestic establishment maintained either (1) by two or more persons living together within the same house or place of abode, subsisting in common and constituting a domestic or family relationship, or (2) by one person.

(b) During the period of his

active service and for six months after his discharge therefrom, no member of the armed forces of the United States shall lose status of a householder under paragraph (a) which he had immediately prior to becoming a member of the armed forces.

In case there is an assessment against more than one member of a household the $100 exemption shall be divided among the members assessed in the proportion that the assessed value of the Class 2 property of each bears to the total assessed value of the Class 2 property of all the members assessed. The Class 2 property of each household claimed to be exempt shall be limited to property in one taxing district, except in those cases where a single domestic establishment is maintained in two or more adjoining districts.

Bonds and certificates of indebtedness hereafter issued by the state of Minnesota, or by any county or city of the state, or any town,or any common or independent school district of the state, or any governmental board of the state, or any county or city thereof, shall hereafter be exempt from taxation; provided, that nothing herein contained shall be construed as exempting such bonds from the payment of a tax thereon, as provided for by section 201.01, when any of such bonds constitute, in whole or in part, any inheritance or bequest, taken or received by any person or corporation.

(9) Farm machinery manufactured prior to 1930, which is used only for display purposes as a collectors item;

(10) The taxpayer shall be exempted with respect to, all

agricultural products, inventories, stocks of merchandise of all sorts, all materials, parts and supplies, furniture and equipment, manufacturers material, manufactured articles including the inventories of manufacturers, wholesalers, retailers and contractors; and the furnishings of a room or apartment in a hotel, rooming house, tourist court, motel or trailer camp, tools and machinery which by law are considered as personal property, and the property described in section 272.03, subdivision 1, clause (c), except personal property which is part of an electric generating, transmission, or distribution system in a pipeline system transporting or distributing water, gas, petroleum products or mains and pipes used in the distribution of steam or hot or

chilled water for heating or cooling buildings and structures. Railroad docks and wharves which are part of the operating property of a railroad company as defined in section 270.80 are not exempt.

(11) Containers of a kind customarily in the possession of the consumer during the consumption of commodities, the sale of which are subject to tax under the provisions of the excise tax imposed by Extra Session Laws 1967, Chapter 32;

(12) All livestock, poultry, all horses, mules and other animals used exclusively for agricultural purposes;

(13) All agricultural tools, implements and machinery used by the owners in any agricultural pursuit.

(14) Real and personal property used primarily for the abatement and

control of air, water, or land pollution to the extent that it is so used, other than real property used primarily as a solid waste disposal site.

Any taxpayer requesting exemption of all or a portion of any equipment or device, or part thereof, operated primarily for the control or abatement of air or water pollution shall file an application with the commissioner of revenue. Any such equipment or device shall meet standards, regulations or criteria prescribed by the Minnesota Pollution Control Agency, and must be installed or operated in accordance with a permit or order issued by that agency. The Minnesota Pollution Control Agency shall upon request of the commissioner furnish information or advice to the commissioner. If the commissioner

determines that property qualifies for exemption, he shall issue an order exempting such property from taxation. Any such equipment or device shall continue to be exempt from taxation as long as the permit issued by the Minnesota Pollution Control Agency remains in effect.

(15) Wetlands. For purposes of this subdivision, "wetlands" means land which is mostly under water, produces little if any income, and has no use except for wildlife or water conservation purposes. "Wetlands" shall be land preserved in its natural condition, drainage of which would be feasible and practical and would provide land suitable for the production of livestock, dairy animals, poultry, fruit, vegetables, forage and grains, except wild rice. "Wetlands" shall include adjacent land which is

not suitable for agricultural purposes due to the presence of the wetlands. Exemption of wetlands from taxation pursuant to this section shall not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands.

(16) Native prairie. The commissioner of the department of natural resources shall determine lands in the state which are native prairie and shall notify the county assessor of each county in which the lands are located. Pasture land used for livestock grazing purposes shall not be considered native prairie for the purposes of this clause and section 273.116. Upon receipt of an application for the exemption and credit provided in this clause and section 273.116 for lands for which

the assessor has no determination from the commissioner of natural resources, the assessor shall refer the application to the commissioner of natural resources who shall determine within 30 days whether the land is native prairie and notify the county assessor of his decision. Exemption of native priarie pursuant to this clause shall not grant the public any additional or greater right of access to the native prairie or diminish any right of ownership to it.

(17) Property used in a continuous program to provide emergency shelter for victims of domestic abuse, provided the organization that owns and sponsors the shelter is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, as amended through December 31, 1980, notwith-

standing the fact that the sponsoring organization receives funding under section 8 of the United States Housing Act of 1937, as amended.

(18) If approved by the governing body of the municipality in which the property is located, property not exceeding one acre which is owned and operated by any senior citizen group or association of groups that in general limits membership to persons age 55 or older and is organized and operated exclusively for pleasure, recreation, and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any private shareholders; provided the property is used primarily as a clubhouse, meeting facility or recreational facility by the group or association and the property is not used for reisdential purposes on

either a temporary or permanent basis.

(19) To the extent provided by section 295.44, real and personal property used or to be used primarily for the production of hydromechanical power on a site owned by the state or a local governmental unit which is developed and operated pursuant to the provisions of section 105.482, subdivisions 1, 8 and 9.

Subd. 2. After December 31, 1971, property owned, leased or used by any public elementary or secondary school district for a home, residence or lodging house for any teacher, instructor, or administrator, and any property owned by any public school district which is leased after May 18, 1975 to any person or organization for a nonpublic purpose for one year or more pursuant to section 123.36, subdivision 10, shall not be included

in the exemption provided in subdivision 1.

Subd. 3. After December 31, 1970, property owned or leased by, or loaned to, a hospital and used principally by such hospital as a recreational or rest area for employees, administrators, or medical personnel shall not be included in the exemption provided in subdivision 1.

Subd. 4. Any property exempt from taxation on January 2 of any year which, due to sale or other reason, loses its exemption prior to October 1 of any year, shall be placed on the current assessment rolls for that year.

The valuation shall be determined with respect to its value on January 2 of such year. The classification shall be based upon the use to which the property was put by the purchaser,

or in the event the purchaser has not utilized the property by October 1, the intended use of the property, determined by the county assessor, based upon all relevant facts.

Subd. 5. The holding of property by a policial subdivision of the state for later resale for economic development purposes shall be considered a public purpose in accordance with subdivision 1, clause (7) for a period not to exceed three years. This subdivision shall not operate to create an exemption from sections 272.01, subdivision 2; 272.68; 273.19; or 462.575, subdivision 3; or other provision of law providing for the taxation of or for payments in lieu of taxes for pubilcly held property which is leased, loaned, or otherwise made available and used by a private person. This section is effective for

taxes levied in 1979 and thereafter, and payable in 1980 and thereafter.